

of its doctors. He declared there is no basis for the contention that the insurance carrier is the employer of the man in the hospital for treatment. He cited the definitions in the labor code of the word "employer" and said that definition does not include the workmen's compensation insurance carrier within the employer classification. He held that under the common law there is no immunity for the workmen's compensation carrier, the employer of the doctor. . . .—San Francisco *Underwriters' Report*.

Social Changes

There seem to be changes coming in the medical profession as much as anywhere. Dr. Arthur F. Chase, president of the New York Academy of Medicine, says that important group is earnestly trying to see ahead and anticipate the future form of society and what its needs will be. His profession, as he puts it, is "in the process of adjusting medicine, in its broadest sense, to the new social order."

Various other professions, not to mention the unprofessional public itself, are engaged in a similar task of adapting themselves to new social conditions. Present-day life seems to be in a state of flux where nearly everything is changing. The war, no doubt, increases this tendency to change. It is hard to guess what life will be like in another half-century, but from present indications it may be much more "socialized," professionally and otherwise, than it has yet been.—Alameda *Times*.

Thousands Quitting Coast in Belief Shipbuilding Peak Past

An exodus of several thousand persons a month from the Richmond area, with the majority apparently quitting jobs in the huge Kaiser shipyards and other Bay region war industries, was indicated today by ration board reports of a heavy increase in special gasoline allotments for out-of-state trips.

Richmond and El Cerrito ration board officials said they were issuing a combined average of seventy-five special allotments a day for these trips and estimated that about 450 families were leaving the area by automobile weekly.

In addition, Pacific Greyhound Lines officials reported more than 500 individuals are buying bus tickets weekly, with two-thirds of them one-way tickets out of the State. "Many" of these passengers, they said, are young men being called back to their home states by draft boards.

In Portland, Edgar F. Kaiser, general manager of the Kaiser shipyards in that area, today blamed a mistaken belief that the war was nearly over for the shortage of 16,000 workers in the yards.

(He said the yards were allowed a ceiling of 103,000 workers, but the total number employed has dropped to 87,000, and full employment is needed to meet contract commitments on schedule.)

The majority of those leaving are bound for Minnesota, Wisconsin, Michigan, Mississippi, Kansas, Illinois, and Texas, officials said.

Figuring three persons to a family, it was estimated 5,400 are leaving by automobile monthly.

Applicants, to secure gas, must present job clearances or sign affidavits they are going into agriculture, said Miss Irene Woods of the Richmond ration board.

Miss Woods said a very small percentage say they are going into agriculture.

Miss Woods said the exodus started three months ago with lay-off of unskilled workers and "absentees" at the Kaiser yard, and continued with recent announcements that the shipbuilding program is "over the hump."—San Francisco *News*.

Of the tuberculosis found among men examined at the United States Induction Center in Massachusetts, 10 per cent were far advanced, 25 per cent were moderately advanced, and 65 per cent early cases. This exactly reverses the usual percentages among cases admitted to sanatoria, of whom 65 per cent are far advanced, 25 per cent moderately advanced, 10 per cent early.—David Zachs, M. D., *Massachusetts Tuberculosis League News Bulletin*, April, 1943.

One thing the depression taught us, that human lives cannot be departmentalized—ignorance, poverty, and ill health are not isolated problems; too often they have proved themselves a vicious circle of cause and effect.—Paul V. McNutt.

MEDICAL JURISPRUDENCE†

HARTLEY F. PEART, ESQ.

San Francisco

In *Trindle vs. Wheeler*, 23 A. C. 332, decided by the California Supreme Court December 18, 1943, the facts were these:

Plaintiff, after spraining an ankle which previously had been broken, consulted the defendant physician and surgeon. He prescribed diathermy as treatment for the injury and, taking plaintiff into a room adjoining his office, instructed a nurse "trained and experienced in such treatments" to apply diathermy to the ankle at 3,000 milliamperes for twenty minutes. The plaintiff's shoe and stockings were removed. She was placed in a recumbent position on a bed and the nurse adjusted the electrodes to her ankle. The electrodes were encased in rubber pads. A folded towel was wrapped around each electrode and the plaintiff's ankle placed between them. The nurse set the dial at 3,000 milliamperes for a twenty-minute treatment. Both the doctor and the nurse left the room and shut the door.

Plaintiff testified she received no instructions from either the defendant physician or his nurse and that after the lapse of a few minutes the ankle became uncomfortably hot. When the heat became unbearable she called for help. The defendant immediately entered the room and turned off the diathermy machine which at that point registered 3,500 milliamperes. Plaintiff sustained a burn on her ankle about the size of a dollar or half dollar. According to testimony of defendant and his assistants, a push button next to the bed on which plaintiff was lying was provided for diathermy patients. The nurse testified that she pointed out this button to plaintiff, told plaintiff to call if the heat became uncomfortable and that such instructions were customarily given to diathermy patients. Plaintiff denied this testimony, saying that no such instructions were given.

At the trial of the action in the Superior Court a verdict was directed in favor of the defendant physician and this judgment was affirmed by the District Court of Appeal. The question then presented on appeal to the Supreme Court was whether, disregarding conflicting evidence and giving to the evidence tending to establish negligence in the administration of the diathermy treatment all the value to which it was legally entitled, there was sufficient evidence to support a verdict in favor of plaintiff. The Supreme Court ruled that there was sufficient evidence, that the judge erred in directing a verdict for defendant, and that the jury should have been permitted to determine the questions presented.

Plaintiff in the case had offered no expert testimony to establish the standard of care in the application of diathermy prevailing in the community. Witnesses produced on behalf of defendant testified that it was considered good practice in the community to leave the patient in the room unattended after the diathermy machine had been set at 3,000 milliamperes and the stop clock at twenty minutes (as was the case here), *provided*, however, that a call device be available to the patient and that she be instructed to use it to summon the attendant if the heat should become uncomfortable. The Supreme Court ruled that plaintiff was entitled to rely on the expert testimony introduced by defendant as establishing the standard of care required by defendant.

The question then presented was whether there had been compliance with this standard of care by defendant. The Court pointed out the conflicting testimony as to whether

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from the syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

defendant had followed this standard of care, by providing a call device and instructing plaintiff in its use. If the jury had believed plaintiff's testimony that she had not been so instructed, a departure from the required standard of care established by defendant's experts would have been shown and a verdict of the jury for plaintiff warranted. Because of the conflict in testimony of plaintiff and defendant on this one factual question, the Supreme Court held that the trial judge erred in directing a verdict for defendant. Accordingly, the judgment was reversed.

The Court did not rule on the applicability of the doctrine of *res ipsa loquitur* (the thing speaks for itself). This is a rule of evidence which excuses plaintiff in malpractice actions based on negligence from affirmatively proving the defendant's negligence. In certain instances the courts have held that where the damaging results of the acts of a defendant are so obviously apart from the normal course of events, the burden is placed upon the defendant to explain the consequences of his treatment. A discussion of this phase of the case is contained in Medical Jurisprudence, March, 1943 issue of CALIFORNIA AND WESTERN MEDICINE.

LETTERS†

Concerning Smallpox Outbreak in California:

CALIFORNIA STATE DEPARTMENT OF PUBLIC HEALTH
Bulletin: February 11, 1944.

As reported last week, smallpox is with us again. In Fresno County there have been, to date, fourteen cases with one death. One of the patients was taken ill in a rooming house, and in seeking medical attention went to the county hospital on the bus. It has been impossible to locate all of the contacts.

So far the cases have been confined to Fresno County, but the type of exposure occurring in this rooming house and on the bus may lead to cases appearing elsewhere.

Health officers and physicians should keep smallpox in mind. If cases, or even suspected cases, appear in your territory, kindly advise us by telephone or teletype.

Bulletin: February 18, 1944.

ATTENTION HEALTH OFFICERS

On February 11, we notified you that a case of smallpox developed in a rooming house in Fresno.

It has been impossible to identify all of the contacts, so we wish to call your attention to the fact that this case is one of *confluent smallpox* and that with an incubation period of fourteen days those itinerants exposed in that rooming house for transients from February 3 to 7, will begin to show symptoms during the next few days. You are urged to be on the lookout for these individuals.

Inasmuch as this outbreak is due to a highly virulent strain of smallpox, we recommend that vaccination programs be initiated.

It is well to warn the public that only a recent, successful vaccination protects against this highly infectious strain.

(Signed) CALIFORNIA STATE DEPARTMENT
OF PUBLIC HEALTH.

Concerning War Loan Drive—San Diego Report: SAN DIEGO COUNTY MEDICAL SOCIETY

February 3, 1944.

Dear Doctor Kress:

Your communication from the Council of the C. M. A. regarding participation of the county medical societies as

† CALIFORNIA AND WESTERN MEDICINE does not hold itself responsible for views expressed in articles or letters when signed by the author.

units in the present War Loan Drive was considered at our local Council meeting February 1.

It was the feeling of the Council that it was too late to do any effective organizing for a drive to sell bonds among our members. A hurried survey showed that a majority of the men had already bought or had other contacts through which they were buying. However, the Council voted to buy \$3,500 in the name of the Society.

Sincerely yours,

(Signed) W. H. GEISTWEIT, JR., M. D.,
Secretary.

Concerning Medical Dues—An Item from "The Bulletin of The Los Angeles County Medical Association":

Dues—A Letter and an Answer
(COPY)

February 2, 1944.

Los Angeles County Medical Association
1925 Wilshire Boulevard
Los Angeles 5, California

Gentlemen:—Last year I criticized the amount of dues required by the California State and Los Angeles County Medical Associations. Indicating that such criticism was prevalent, the letter was answered by a multigraphed form letter showing expenditures. Of the expenditures, something like \$75,000 went for the ill-timed and ill-fated "Basic Science Law" support.

Having no such item for 1943, it would interest me to know how the money was spent for that year. I consider this check the highest price I have paid for the least service rendered in my expense account for 1943.

Very truly yours,

(Reply: Copy)

Dear Doctor:—In compliance with your request, a copy of the Association's statement of income and expenditure for 1943, is being mailed to you.

Although more than 1,500 members have paid their dues for 1944, yours is the only complaint thus far received that dues are excessive. Nevertheless, you are entitled to your opinion, which I would, if possible, like to change.

First, \$20 of your \$37.50 goes to the California Medical Association to be expended as the House of Delegates and Council see fit. Included in this amount is a subscription to CALIFORNIA AND WESTERN MEDICINE. The expenses of the State office and the cost of the annual convention must be met. In the past the State Association has expended large sums for various purposes, such as the Dodd survey, public relations campaigns, loans to California Physicians' Service, expense of campaigns to defeat initiative propositions inimical to the public health, and recently it made a contribution to the newly formed United Public Health League. The wisdom of some of these expenditures is perhaps debatable in retrospect, but your elected representatives ordered them to be made and they did so in all sincerity and good faith. Honestly now, how much time and effort did you personally devote to convincing the electorate that the Basic Science Bill was desirable? How many speeches did you make, and how many letters did you write?

The remaining \$17.50 goes to the County Medical Association, which promptly refunds \$5 to your local branch for its expenses. The remaining \$12.50 supports the building at 1925 Wilshire Boulevard, where about one hundred medical programs are presented each year, the library with its able staff and the permanent office personnel who render innumerable services to the membership, some of which